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Current Topics.

Liabilities (War-time Adjustment) Bill.

THAT most interesting legislative experiment, the Liabilities (War-Time Adjustment) Act, 1941, is to be extensively amended by a Bill which received its second reading in the House of Lords on 1st August. The adjustment and settlement of what are called moratorium debts and liabilities are provided for by the first three clauses, which are new. Moratorium debts and liabilities are (*a*) debts and liabilities to which para. (1) of reg. 4 of the Defence (Evacuated Areas) Regulations, 1940 (which grants a moratorium in respect of rents, rates and certain other liabilities of evacuated persons) apply or will apply; (*b*) debts or liabilities under contracts of guarantee, indemnity or insurance entered into before the date of the said regulations in respect of any of the said debts and liabilities. The person who owes the debt or liability will be able to apply to a liabilities adjustment officer for advice and assistance or to the court for an adjustment and settlement of the debt or liability, and a creditor can also apply to the court. The Lord Chancellor will be empowered to order the extension of the application of these provisions to further areas where there has been extensive and prolonged evacuation as a result of war circumstances. Another new provision enables the court to grant a debtor postponement, reduction or complete remission of rates in its liabilities adjustment order, if such a settlement would afford him a reasonable prospect of recovering his business or other means of livelihood. The rating authority will be given a reasonable opportunity to make any necessary representations to the liabilities adjustment officer and to be represented at the court. The court will also be given a new power to allow liabilities adjustment proceedings to be brought in relation to the estate of a deceased person by his personal representative. The court is not to allow such proceedings where it is satisfied that any benefit thereby accruing to persons interested in the estate will accrue wholly or mainly to persons other than members of the deceased person's family. The court will also be empowered to permit liabilities adjustment proceedings to be brought on the joint application of a beneficiary and trustees where a business is carried on or any property is held on trust for the benefit of a person who is wholly or mainly dependent on the income derived from the business or property. Another new provision protects liabilities adjustment officers against liability for loss suffered by any person as a result of the officer disposing in pursuance of an order of the court of property not belonging to the debtor, but on his premises or in his possession, except where he has been guilty of negligence. Provision is also made that protection orders may be registered in the register of writs and orders affecting land at the Land Registry under s. 1 of the Land Charges Act. (See 87 SOL. J. 170, where "A Conveyancer's Diary" discusses this matter, and *The Law Society's Gazette* for February, 1943, dealing with the correspondence between The Law Society and the Lord Chancellor on the matter.)

Further Amendments.

ANOTHER salutary new provision in the Liabilities (War-Time Adjustment) Bill is that which gives the court in liabilities adjustment proceedings power to exercise its powers under s. 1 of the Moneylenders Act, 1900, as extended by ss. 10 and 13 (2) of the Moneylenders Act, 1927. These are powers to reopen moneylenders' transactions and adjudge what sum is fairly due and relieve the debtor or his surety from payment of the excess, and, where the moneylender sues before the whole amount is due to order outstanding principal to be paid to the moneylender. The court's powers will be exercisable at the instance of either the debtor or the liabilities adjustment officer, notwithstanding any agreement to the contrary, and notwithstanding that the time for repayment of the money or any part thereof has not arrived. A declaratory clause, for the avoidance of doubt, enacts that where any provable debt is reduced by the court in liabilities adjustment proceedings, the creditor shall not be entitled to recover that debt (as so reduced) otherwise than by proving therefor in the proceedings. Another important amendment is contained in a clause which substitutes for s. 9 (1) of the principal Act (which provides for the payment of proved debts in the same priority as under the Bankruptcy Act, 1914) a provision that for the purpose of the distribution of any sums from time to time available for the satisfaction of the proved debts of the debtor, all those debts shall rank equally between themselves. Among the other numerous amendments are provisions enabling the court to make an interim order or orders for the adjustment of liabilities, to order that a debtor shall be wholly or partly relieved from the payment of rent in certain circumstances, or postpone payment of rent, to order relief from forfeiture of a lease which has arisen as a result of default in payment of rent, which is due to war circumstances and the postponement of payment of mortgage interest by the debtor. It is interesting now to recall that the principal Act came into operation on 1st July, 1941. Down to 31st December, 1941, 940 applications had been made to liabilities adjustment officers. Of these 223 were later rejected, 64 schemes of arrangement were approved, 279 protection orders were made, and 63 adjustment orders were made. By December, 1942, 776 protection orders and 386 adjustment orders had been made and 156 schemes had been approved. These figures show that this pioneering legislation has, in spite of the small amount of publicity which it has received, attained some measure of success. It is to be hoped that the amending Bill will soon find its place in the statute book.

Nationality of Illegitimate Children.

MISS BARBARA WARD, M.P., raised an interesting and important question in the Commons on 27th July relating to the nationality of illegitimate children. She said that the position at present is that if a girl in the Services serving abroad has an illegitimate baby, even if it is proved that the father is a British subject, the child is not entitled to any nationality. Miss WARD asked if some way could be found within the present law to meet this quite intolerable position. There were really two aspects of the situation. The first was that, by the time the child reaches the age of sixteen, the parent may have completely lost sight of the fact that the child has no nationality. Miss Ward did not know that this was true in regard to the whole of the Civil Service, but she did know that, if, for instance, you wanted to enter the Post Office, you had to be the child of British parents. A child might sit for a scholarship, but one of the conditions often laid down is that the child must be of British parentage, and, therefore, she did not think the Minister was entitled to argue that a child will not be at any disadvantage until the age of sixteen. Miss WARD asked if there was not some way to meet this position so that a child shall not suffer before reaching the age of sixteen, and to ensure that, when it is sixteen, automatically, application will be made for naturalisation. The UNDER-SECRETARY OF STATE for the Home Department replied that a very small number of illegitimate children had been born to women members of His Majesty's Forces serving overseas. It was perfectly clear that, under the law of British nationality, which is contained in the Act of 1914, children born in these circumstances outside British territory were not British subjects. The first question one asks in relation to British citizenship: "Where was this person born?" That was the guiding factor in the great majority of cases, and children born abroad are not, in the ordinary way, British subjects by birth. They are so if they are born of British parents and if they are the first generation born overseas, but an illegitimate child, in the eyes of the law, had no father, and

therefore, in the eyes of the law, as laid down in the statute, such a child born abroad cannot be a British subject by birth. In addition to defining who are British subjects by birth, the Act deals with the subject of naturalisation. The law as to naturalisation is contained in Pt. II of the Act, and the important sections for this purpose are ss. 2 and 5. When Parliament passed the principal Act in 1914, they showed great faith in the Home Secretary, because they gave to the Secretary of State a very wide discretion, in these terms. Section 5, subs. (2), said: "The Secretary of State may, in his absolute discretion in any special case in which he thinks fit, grant a certificate of naturalisation to any minor, whether or not the conditions required by this Act have been complied with." That was a very wide discretion which rests in the Home Secretary, but if hon. members will consider the terms of s. 2, they will see the snag in s. 5. Section 2 says: "A certificate of naturalisation shall not take effect until the applicant has taken the oath of allegiance." Honourable members will at once see that it is very difficult for a child of tender years to take the oath of allegiance, because, in the eyes of the law, a child of tender years is not capable of understanding the nature of an oath or of having an oath administered to it. Regulations under the Act provided for the oath of allegiance being taken within one month of the issue of the certificate, or, in special cases, during such longer period as the Home Secretary may direct. The Home Secretary was prepared, where the mother of the child was a British subject and serving overseas in His Majesty's Forces at the time when the child is born, to issue a certificate of naturalisation, under s. 5 (2). That certificate, it is true, would not be legally effective to confer British nationality upon the child until the child can itself take the oath of allegiance, but the child will be able to take the oath of allegiance before an age at which any disability would result through the absence of British citizenship. That age would be somewhere round about the ages of twelve to fourteen years. The issue of the document to them at that stage will be their earnest that they could obtain British citizenship on their own behalf.

Psycho-analysis and Crime.

THE recent appointment of a committee to investigate the treatment of offenders lends some interest to a pamphlet published a few weeks ago by the Department of Criminal Science of the Faculty of Law of the University of Cambridge on Psycho-Analysis and Crime by Major S. H. FOULKES, M.D. (London-Exeter). The pamphlet was originally published in the *Canadian Bar Review* for January, 1944. In his recent book on "Crime and Psychology," Mr. CLAUD MULLINS demonstrated how useful the work of the psycho-analyst might be in the treatment of the offender after sentence. Professor CYRIL BURT, in his preface to this pamphlet, goes immediately to the root of the matter by showing that the basis of the criminal legislation of the latter part of the nineteenth century was the hypothesis of the "born criminal" (*il reo nato*) worked out by Lombroso and popularised by Havelock Ellis. The modern psychologist, Dr. BURT states, has had to borrow the empirical method of the scientific observer. Psycho-analysis he defines as "essentially a study of unconscious human motives." The evidence of Freud, he states, has done much to persuade psychiatrists that many of the symptoms of so-called mental diseases are merely the effect of natural human reactions to unnatural social conditions. Psycho-analysis, he states, is a lengthy and therefore expensive mode of treatment, but the broad conclusion seems to be well established that, in the main, criminal conduct consists of natural, if irrational, reactions to adverse environmental conditions. Unwise or unfavourable home treatment or atmosphere, he states, is the commonest and most influential of the causes of delinquency. Instead of the Lombroso conception of the born criminal, modern psychologists follow Darwin's lead and believe that all human beings, good and bad, inherit a number of elementary instincts, similar to those inherited by lowlier animals. Sublimation, i.e., direction of these instincts into useful aims, should be sought, says Dr. BURT, rather than suppression. Dr. BURT concludes that the prevention and cure of delinquency requires the co-operative work of an expert team of doctors, psychologists, social workers and other specialists. The author of the pamphlet claims that psycho-analysis proper of legal offenders has not yet had a fair trial. With a wealth of illustration and argument, some of it highly technical, he arrives at the conclusion that punishment is of doubtful value. He builds up an admirable illustration from the growth of the traffic laws, and says: "Never can the individual offender be considered apart from the traffic of his time, the conditions of the road or the nature of the traffic laws, nor does traffic exist apart from the individual. It is to be hoped that the new committee will not omit to give due consideration to the new scientific outlook on the treatment of delinquency.

Rent Control Committee: Further Evidence.

AN interesting development in the progress of the work of the Inter-departmental Committee on Rent Control has recently been published by the Auctioneers' and Estates' Agents Institute in the *Estates Gazette* of 12th August. After submitting its memorandum, to which we have referred in a previous "Current Topic" (*ante*, p. 138), the Institute gave oral evidence. While giving their evidence the Institute's representatives were told that it might be as long as five or six years before a complete revaluation of the kind envisaged by the Institute's memorandum could be carried out, and they were asked if they could develop their suggestions for immediate amendments of the present Acts to tide over the interval before complete revaluation was possible. The Institute accordingly submitted a further memorandum in which it stated that after long and careful consideration of the whole question it had again come to the conclusion that the only satisfactory solution was to have a complete revaluation for rating purposes, or an independent valuation to fix the basic rents of controlled houses, and that it was desirable, and should be possible, for the necessary valuation to be completed within the next two years. It proposed immediate amendments to meet the situation in this comparatively short interval, but if five or six years must elapse before there is a complete revaluation, it was unable to find any scheme for the revision of rents which it could recommend. The detailed recommendations for the interim two years' period involve the division of houses into categories, the rents to be levelled up on a pre-war basis, and a percentage added to meet the increased cost of repairs. The categories and recommendations with regard to each category are set out in detail in the memorandum, and it is proposed that it should be open to landlord or tenant to appeal to a rent tribunal, or, if there is no such tribunal, to the county court, for the standard rent to be adjusted to the level of comparable houses in the same locality, if he thinks he can prove that the standard rent of his house is at least 15 per cent. above or below the average standard rents of comparable houses. It is also recommended that at any time after the passing of the amending Act, in order to establish the standard rent, the landlord should be entitled to serve on the tenant a notice showing the standard rent, and how it is made up; and unless the tenant objects within six months, the notice should be conclusive proof of the standard rent. The Institute remains of the opinion that it is desirable to set up rent tribunals, but in the alternative they suggest that except as to points of law, which should be referred to the judge, the county court registrar, sitting with a technical assessor, should have full jurisdiction in Rent Act cases. They also suggest that a managing agent should be allowed to plead his client's case and that the registrar should sit all the year round. Costs of solicitors and counsel, it is stated, are too high for the class of case, and much delay is caused by "the Long Vacation." Neither of these statements, we submit, are well founded. Auctioneers and estate agents have not the necessary training to enable them to take any part other than that of witnesses in judicial proceedings, nor have they the inclination to charge less for their work, whether in or out of court, than solicitors, whether instructing counsel or appearing themselves as advocates. Moreover, the Long Vacation does not apply to the county courts, and the short holiday permitted in those courts causes no appreciable delay to litigation. Apart from this criticism, which we feel bound to make, the memorandum is a substantial and noteworthy contribution to the consideration of a vexing problem.

The U.S.A. and Double Taxation.

THE Finance Act, 1930, s. 17, authorises the making by His Majesty's Government of reciprocal arrangements with any foreign state or dominion for the purpose of granting relief from double taxation or profits or gains arising directly or indirectly through an agency in the United Kingdom or in the foreign state or dominion, with certain exceptions. The Foreign Office announced on 22nd August that exploratory conversations had been taking place for some time between representatives of the Government of the United States and the British Government on the possibility of negotiating a treaty for the avoidance of double taxation in respect of incomes and death duties. The first phase of these discussions, it was announced, has been satisfactorily concluded. The representatives of the United States Government who visited London are now returning to the United States, and it has been agreed that the discussions will be resumed in Washington with representatives of the British Government who will travel to Washington for that purpose at an early date. The discussions have been held at Somerset House with the Board of Inland Revenue.

Recent Decision.

In *R. v. Tearse and Others*, on 24th August (*The Times*, 25th August), the Court of Criminal Appeal (HUMPHREYS, WROTTESLEY and TUCKER, JJ.) decided in a case in which CASSELS, J., had held that acts which took place some time before a strike occurred and which consisted in helping apprentices to prepare for the strike by taking part in preparing the necessary documents and other parts of the strike organisation were acts "in furtherance of a strike" within s. 1 (2) of the Trade Disputes and Trade Unions Act, 1927, that convictions under the section must be quashed and the appeals allowed. The court is to deliver a reserved judgment in writing at a later date. It was argued for the appellants that the words "in furtherance of a strike" implies that there must be a strike in existence at the time when the acts complained of were done.

Legal Aid and the Legal Profession.

[CONTRIBUTED.]

THE appointment by the Lord Chancellor at a crucial stage in the war of a committee to report on legal aid is proof enough of the urgency of this matter. The predecessor of the present committee, reporting in 1928, was reasonably satisfied with the facilities that then existed, but this fact should not mislead anyone into thinking that no substantial changes are likely to be introduced this time.

The spirit in which the many aspects of post-war planning are being discussed is that every profession and trade must consider first and foremost how its services can be made available to all sections of the community. So far as the legal profession is concerned, the most important single aspect of this problem is legal aid. No profession can to-day afford to consider only its own interests or to consider them first. If it is objected that the legal profession has never done this, the objector is referred to an article in the *Law Journal* in 1925.* The writer of that article was by no means blind to the injustice which resulted from lack of legal representation in county courts and police courts, but his conclusion was that a solution was almost impossible because many solicitors made their living out of their practice in these courts and their interests would be injured by any system of legal aid. Such an argument would hardly be expressed openly to-day, but the attitude is still there, and it is a wholly mistaken one. If more legal assistance is needed by the poor the profession is strong enough to see that it is provided on terms, and in a manner, which will not injuriously affect the standing of practitioners. The needs of the population must be considered first; if they exist, a reasonable way of meeting them can be worked out.

It is a hopeful sign that the present committee, under the chairmanship of Lord Rushcliffe, is authorised to inquire into the whole subject of legal aid. The last committee dealt only with the county courts, police courts and legal advice, and the two previous committees only with poor persons' procedure. This is one of the reasons why the official schemes provide legal assistance for criminal defences and High Court litigation only. Lord Rushcliffe's Committee will receive strong evidence that both these schemes should be extended to cover more people and that provision is needed for matters which do not fall within the schemes. The main defects to which attention will be drawn on behalf of poor persons can be summed up under the following five heads:—

(1) *Out-of-pocket expenses.*—The failure of the Treasury to provide a fund for the out-of-pocket expenses of poor persons, as was promised in 1914, is a matter to which poor persons' committees have repeatedly drawn attention and one which can easily be remedied.

(2) *Raising the poor persons' limits.*—This again is a suggestion which many poor persons' committees have made. The capital limit of £50, or, in special circumstances, £100, was fixed in 1914, the income limit of £2, or, in special circumstances, £4, was added in 1921. In practice, some committees very soon accepted applicants with up to £3 a week, without proof of special circumstances, but the figures, even before the rapid war-time increase, had lost all relationship to the cost of living.

When these limits are raised to a fair level there will still be people, whose means are above that level, who can afford to make some payment for legal services but who cannot afford to pay the full costs for which they would be liable in some cases. This raises the question of reduced fees, but it will be more convenient to deal with the point when the remaining needs have been considered.

(3) *County court and 'civil' police court cases.*—It should hardly be necessary to persuade lawyers that representation is needed in some of these cases; it should be sufficient to mention the Rent Restrictions Acts and Workmen's Compensation Acts, which are dealt with in the county courts, and matrimonial and affiliation cases, which are dealt with in the courts of summary jurisdiction. As, however, The Law Society gave evidence to the last committee that legal aid for poor persons was not necessary in the county courts, it may be as well to repeat the late Sir Edward Parry's observation that, if the poor party is not to have representation, neither side should have it, and solicitors and barristers should be banned from these courts.

(4) *Criminal cases.*—As we are dealing with criticisms made on behalf of poor persons we need not discuss the question of whether the fees paid for the defence of poor prisoners are adequate; the reluctance of magistrates to grant *legal aid certificates* is, however, a matter for concern. The fact that in 1939 only 327 of these certificates were granted in all the cases tried by magistrates speaks for itself. In the previous year 19,079 cases were sufficiently serious for magistrates to pass sentences of imprisonment without the option of a fine.

(5) *Legal advice.*—Although the provision of information on general and miscellaneous social topics is now highly organised and undertaken by trained workers, the idea persists that it is sufficient for the legal difficulties of the poor to be left to some philanthropic lawyer who is willing to give up an evening a week to "Poor Man's Lawyer" work. The importance, from the point of view of morale alone, of guidance on personal problems was sufficient for the Army and the two other Services to institute, during the war, systems for providing legal advice. It is just as essential that a civilian population should be free from unnecessary worries, and, above all, from a sense of grievance over being at a disadvantage when opposed by a powerful organisation or individual. It is, moreover, an obvious economy to dispose of cases without litigation whenever possible. Poor persons' litigation costs money to the taxpayer, the poor person, the solicitor and occasionally the opposing party, and while this cannot, as a rule, be avoided in divorce cases, it can, and should, be reduced to a minimum in all types of proceedings.

The amount of legislation which affects the poor person has increased enormously in recent years, and like every other citizen he should be able to get to know the effect of the statutes and regulations by which he is confronted throughout his life. In practice, most of this information and advice is provided at citizens' advice bureaux or other social relief agencies by people who are not lawyers. With very few exceptions, the poor man's lawyer centres which do exist are inadequate for the task. In large cities, at least, there should be offices where those citizens who cannot afford a solicitor's fees should be able to get accurate up-to-date information and preliminary assistance with regard to their tenancies, their accidents, their matrimonial and other difficulties.

If the above represents a fair estimate of the needs of the situation, it is obvious that lawyers will be required to provide their services on a considerable scale, and one of the obstacles to earlier reform has been the assumption that these services will have to be provided gratuitously. This is a totally impracticable proposal. The cases which fall within the existing Poor Persons' Rules have increased enormously. This is not only due to the passing of the Matrimonial Causes Act, 1937—there was a steady increase in earlier years. During the war the procedure has been saved from complete breakdown by the setting up of The Law Society's Services Divorce Department, which was later extended to deal with civilian cases. There is no reason to expect a decrease in the number of divorces in the years following the war, and, when the poor persons' means test is raised to a reasonable level, the provision of free assistance in the High Court alone will probably become an impossibility. Representation in civil cases in the police court and in the county court will constitute a fresh undertaking of at least equal dimensions.

To ask for this vast amount of work to be done free of charge would be both futile and unfair. In effect, the poor persons' procedure is based upon the assumption that solicitors and barristers make sufficient out of their ordinary clients to be able to afford the necessary time for poor persons' work. That principle is wrong now, if it ever was right. The cost of legal proceedings and the relative poverty of large numbers of people is the responsibility of the whole community and the burden of making justice accessible to all should be equally shared. It is not to be expected that payment for these assisted cases will be on the full scale, but the fees should be sufficient to cover the solicitor's office expenses and to provide some profit. Where the assisted person can afford to pay these reduced fees he should do so; in other cases the necessary funds should be provided by the Treasury and administered by The Law Society, preferably in conjunction with some of the social service organisations which have played an important part in unofficial legal aid work.

In this way the grievances of many of those who complain that the machinery of justice is useless to them because it is out of their reach can be removed. The prestige of both lawyers and the State would be enhanced and one of the fundamental objects of government—equality before the law—would be nearer attainment than it has ever been before.

* 60 L.J. 213, 237, 261.

Obituary.

MR. H. BASTIDE.

Mr. Harry Bastide, solicitor, of Elland, Yorks, died on Friday, 11th August, aged seventy-eight. He was admitted in 1888.

MR. C. H. P. BETENSON.

Mr. Charles Henry Pollard Betenson, late partner in Messrs. Gard, Lyell & Co., solicitors, of 47, Gresham Street, E.C.2, died on Saturday, 12th August, aged seventy-four.

MR. H. M. JONES.

Mr. Harold Mouat Jones, solicitor, of Messrs. Jutsum, Jones, Arthur & Light, solicitors, of St. Martin's Lane, W.C.2, died on Saturday, 19th August, aged sixty-seven. He was admitted in 1898.

MR. M. J. McGAHEY.

Mr. Michael John McGahey, solicitor, of Messrs. Dunn & Baker, solicitors, of Exeter, died on Tuesday, 22nd August, aged seventy-one. He was admitted in 1906.

MR. P. S. WADE.

Mr. Philemon S. Wade, solicitor, of Otley, Yorks, died on Sunday, 20th August, aged fifty-nine. He was admitted in 1906.

A Conveyancer's Diary.

The "Curtain."

In their preface to the twelfth edition of "Wolstenholme" the learned editors observe that "Among some of the older practitioners there appears still to be a tendency to make inquiries respecting equities which are intended to be placed behind the curtain, thus playing into the hands of the advocates of registration of title. This tendency is, however, likely to disappear where the younger generation assume control." This observation was made in 1932, and the first sentence of it appears still to be true a dozen years later. In practice, one still sees too many abstracts which disclose more than is necessary; and where that occurs it is very difficult for the purchaser's advisers to ignore the superfluous parts of the abstract. Just recently I saw a case where the vendor's documents were all extremely well got up. The abstract traced the whole title, equities included, down to a date in 1926, when a vesting deed was duly made; it then proceeded for another twelve pages or so in the same vein, disclosing a further strict settlement and some complicated arrangements about equitable rent-charges as well as the perfectly correct series of later vesting instruments. There was nothing wrong with the title at all, but the abstract was at least half as long again as it need have been. Rightly or wrongly, we put in a few minor requisitions about the equitable title, and we were then met with the truthful reply that, strictly, it was no business of ours. With the present shortage of time, labour and paper it seems possible that many of us would do well to refresh our memories of Sched. VI to the Law of Property Act, which shows the complete history of certain specimen titles, italicising the items which alone should be abstracted. The quantity of the matters in italics is strikingly limited.

The economies which flow from the legislation of 1925 are mainly concerned, of course, with land which has been the subject of settlements. If the settlement is one on trust for sale, the key provision in L.P.A., s. 27, subs. (1), provides: "A purchaser of a legal estate from trustees for sale shall not be concerned with the trusts affecting the proceeds of sale of land subject to a trust for sale (whether made to attach to such proceeds by virtue of this Act or otherwise), or affecting the rents and profits of the land until sale, whether or not those trusts are declared by the same instrument by which the trust for sale is created." Subsection (2) is the familiar provision requiring that receipts shall be given by two trustees for sale or by a trust corporation. In a good many cases, of course, the trust for sale is created by one of a series of instruments going back before 1926. In such a case it will generally be necessary to abstract the title fairly fully so as to show that there is indeed a trust for sale and that the land is not settled land. For some reason the Acts did not require trustees for sale to execute vesting deeds on the coming into force of the new law; it would have saved trouble if that had been required, because titles would have been looked into in the later nineteen-twenties and the vesting deeds would by now have been getting almost ripe as roots of title. However, that was not done. Of course, if the trust for sale was created after 1925 (otherwise than by will) there should have been two instruments, viz., a conveyance on trust for sale and a settlement of proceeds of sale. Where that is done, the purchaser of the legal estate should see only a series of very simple instruments; there should be nothing but the original conveyance on trust for sale, followed by any appointments of new trustees which there may have been. If the trust for sale is created by will, all that need be shown is the appointment of executors, the devise on trust for sale, an assent on trust for sale and a series of appointments of new trustees of the assent on trust for sale. The separation of the trust to sell from the trust of proceeds is demanded by s. 35 of the Trustee Act, 1925, subs. (1) of which requires that "appointments of new trustees of conveyances on trust for sale on the one hand and of the settlement of the proceeds of sale on the other hand, shall, subject to any order of the court, be effected by separate instruments, but in such manner as to secure that the same persons shall become trustees of the conveyance on trust for sale as become the trustees of the settlement of the proceeds of sale." Subsection (2) relates to settled land and is mentioned below. Subsection (3) directs that "where new trustees of a conveyance on trust for sale relating to a legal estate are appointed, a memorandum of the persons who are for the time being the trustees for sale shall be endorsed on or annexed thereto by or on behalf of the trustees of the settlement of the proceeds of sale, and the conveyance shall, for that purpose, be produced by the person having the possession thereof to the last-mentioned trustees when so required." (The word "conveyance" in those subsections, and in the Trustee Act generally, includes an assent: see T.A., s. 68 (3).) I have considerable doubts whether the practices thus prescribed are anything like always followed. The real weakness seems to be that the Act does not say what is to happen if they are not: there is no reason to suppose that a title derived from trustees for sale who have been appointed by one instrument instead of by two is a bad title. Of course, a purchaser can requisition on the point; but I doubt if he gets much further by doing so, and the general upshot is that there is not enough inducement to follow the correct practice to ensure that it is followed.

As regards settled land, the position is, if anything, rather worse. The purchaser is concerned, of course, to look at the *first* vesting instrument to see that it was regularly made: see the proviso to S.L.A., s. 110 (2). But after that point he is bound to make the assumptions contained in the body of the subsection. One such assumption is that the persons stated by the last or only principal vesting instrument to be the trustees of the settlement, "or their successors appearing to be duly appointed" are the properly constituted trustees of the settlement. The reference to the appearance of due appointment means that one has to look at the evidence of appointment prescribed by the Act; such evidence consists of a deed of declaration made in conformity with S.L.A., s. 35 (not to be confused with T.A., s. 35, mentioned above). The S.L.A., s. 35, requires that whenever a new trustee for the purposes of the Act is appointed (or where such a trustee is discharged) a deed shall be executed declaring who the new or continuing trustees are. This deed of declaration is to be supplemental to the vesting instrument; it is to be executed by the person who, according to the vesting instrument, is entitled to appoint new trustees, together with all the retiring, new and continuing trustees. If the court appoints new trustees the deed is to be executed by such party as the court directs. Finally, a memorandum of the change has to be endorsed on or annexed to the last or only principal vesting instrument, in conformity with T.A., s. 35 (2). If this procedure is duly followed, one will get very brief and self-contained abstracts in these cases (once one gets past the stage where the grounds for making the first vesting instrument have to be examined) consisting of the vesting instrument, with endorsements, and the supplemental deeds of declaration. I do not believe that this practice is sufficiently often followed: at the moment I cannot recall ever having seen the abstract of a deed of declaration, but I have very often seen abstracts of appointments of new S.L.A. trustees. By the correct practice, the latter ought not to appear on the abstract except if they are made before the first vesting instrument. Here also the trouble is that there is no particular inducement to be correct. If the purchaser is confronted with a properly constituted set of instruments, s. 110 (2) prevents his looking behind them. But what he is really looking for is to get the legal estate from the right person as tenant for life and to get a receipt for the purchase money from the right persons as S.L.A. trustees. If these facts are truly shown, the purchaser will not complain very much if they are shown by inelegant methods or otherwise not in precisely the way proposed by the Act.

But the fact is that, both for settled land and land held on trust for sale, the statutory methods are good methods and would save trouble in the end if they were invariably adopted. It is mainly a matter of habit, and it would be desirable that the prescribed methods should be generally used now that the Acts have attained the respectable age of almost twenty years.

Landlord and Tenant Notebook.

Intention as affecting Standard Rent.

When I discussed *White* v. *Richmond Court, Ltd.* (1944), 60 T.L.R. 391 (C.A.), in our issue of 15th July last (88 Sol. J. 243), heading the article "Self-contained Lease," I bewailed the absence of precise information on some of the facts of this case. The deficiency has since been kindly supplied by those acting for one of the parties, namely, the tenant.

The facts given in the report included the following: a lease of a flat reserved a rent of £200 a year. On the day on which it was granted, the landlords wrote to the tenant enclosing a deed executed by them reducing the rent by £50 a year.

It was held that for the purposes of determining the standard rent, the lease, described by Scott, L.J., as "completely self-contained," decided "the rent at which the dwelling-house was first let after 1st September, 1939." Consequently, when the contractual tenancy expired the landlords were entitled to let the flat at £200 a year.

The point on which I thought further information was desirable was that of the sequence of the two events: the *delivery* of the lease and that of the deed. This in view of the rule of law by which a document under seal takes effect from delivery. What I am now told shows that both documents were sent by post in the same envelope, with a covering letter. But it still seems that no inquiry was made about the order of delivery in the technical sense. It also appears the tenant had already executed a counterpart of the lease, and that the letter with its enclosures was despatched on the day on which the term began. In these circumstances, and in view of the fact that both letter and deed speak of a *reduction* in or of the rent reserved, I think the conclusion I reached by conjecture was correct: in effect, the amount named in the lease was the rent at which the flat was first let after 1st September, 1939, though that rent was very soon reduced to a lower figure.

But my further information also warrants further discussion of a point lightly touched upon before, which may be briefly expressed in this way: did the lease create a letting at all?

The report shows that the tenant's case rested partly on a sentence in the judgment of Lord Greene, M.R., in *Bryanston Property Co., Ltd.* v. *Edwards* (1943), 87 Sol. J. 439 (C.A.):

"Moreover, in applying an Act like the Rent Restriction Act to a document of this kind, I do not think that too much attention should be paid to technical argument. The Act contemplates the substance of the obligations of the tenant, and here the tenant is to pay £190 and no more." This argument was somewhat unceremoniously brushed aside, the court holding that there could be no liberal interpretation where the terms of the letting were expressed in "a lease executed by deed."

Without commenting on the question whether the difference between a parol agreement and a document under seal constituted the *ratio decidendi*, I did point out that whereas in *Bryanston Property Co., Ltd.* v. *Edwards* there was one document, in *White* v. *Richmond Court, Ltd.*, there were two; and whereas in the one case the lower figure was to be payable temporarily, namely, till the end of the war, in the other it was to be effective throughout the term. This supported the view that there had, in effect, been two lettings in the second case.

I went on to explore the possibility of impugning the transaction as an attempt to evade the Increase of Rent, etc., Restrictions Acts, observing that the recent decision in *Maclay* v. *Dixon* (1944), 1 All E.R. 22 (C.A.), tended to dispose of that suggestion. But I further observed: "The existence, if not exact position, of a line was, however, shown by *Conqueror Property Trust, Ltd.* v. *Barnes Corporation* (1943), 60 T.L.R. 75 (see 87 SOL. J. 453: "Sham Leases")."

And as among the further information received there are facts which show that *Conqueror Property Trust, Ltd.* v. *Barnes Corporation* must have been relied upon by the applicant in *White* v. *Richmond Court, Ltd.*, though the county court judge's note is silent on the point and the report does not mention how it was dealt with, I propose briefly to compare the positions in those two cases and in *Maclay* v. *Dixon*.

In *Conqueror Property Trust, Ltd.* v. *Barnes Corporation*, the company concerned executed, in December, 1939, leases of flats, the grantees being another limited company. The leases were "in the usual form for such tenancies," containing not only tenant's covenants to repair, but covenants against business and limiting user to that of private dwellings, etc. No doubt the latter circumstance contributed towards the finding that the grantees not only never occupied, but also never intended to occupy the flats. Later, the landlords, having let first at a much lower rental and then at higher rentals, were called upon to make statutory statements as to the standard rents; they gave the figures named in the leases to the other company and were summoned for supplying statements false in material particulars. The matter came before the Divisional Court by way of a case stated and the following two passages from the judgment of Macnaghten, J., indicate the line taken: "A document may be executed with no intention that it should be acted on, but merely for purposes of show." "The letting referred to in the Rent Restriction Act obviously means a real letting by a landlord who intends to let to a tenant who really intends to take. It does not include a document executed merely for the purpose of being paraded as a document establishing a standard rent."

In *Maclay* v. *Dixon*, the owner of an empty house was approached by an intending tenant, to whom he replied that he would let it only if it remained outside the Increase of Rent, etc., Restrictions Acts, and explained that this could be achieved by letting it with furniture. The applicant then sold him some furniture and a tenancy was granted of the house with that furniture. The sale of the furniture was found or held to be "real" and the common intention held not to negative the *bona fides* required by the statutes. Scott, L.J., said that intention would be irrelevant unless the court had other materials on which to hold that the whole thing was a sham.

The relevant facts in *White* v. *Richmond Court, Ltd.*, were, in addition to the fact that two documents were executed, the fact that in the previous negotiations the lower amount had been agreed, the fact that referees given by the tenant had had that figure put to them, and the fact that the lease obliged him forthwith to paint and distemper the interior of the premises, coupled with the fact that the reduction effected by the second document was expressed to be in consideration of the flat being taken in its then undecorated condition.

The tenant may, I suggest, well have seized upon the first passage in the judgment of Macnaghten, J., in *Conqueror Property Trust, Ltd.* v. *Barnes Corporation*, cited above, and on the second part of the second passage, urging that the alleged "self-contained lease" was a document executed with no intention that it should be acted on, but merely for the purposes of show, and of being paraded as a document establishing a standard rent. He may also have contended that the undertaking to decorate and pay at the higher rate followed by a concession purporting to be supported by the consideration of the premises being undecorated showed such inconsistency as to warrant the conclusion that the lease was a sham and have invoked the judgment of Scott, L.J., in *Maclay* v. *Dixon*.

In answer to which, it may well have been said that, as the first part of the second passage from Macnaghten, J.'s above cited judgment suggests, a letting cannot be unreal if, in fact, the tenant intends to and does occupy by virtue thereof; that Scott, L.J., was dealing with a provision which stipulated for *bona fides*; and that the reduction actually went to show genuineness, being a slighty belated recognition of the tenant's claim for consideration as described.

My own view would still be that it would in any event be difficult for the tenant to escape a finding that there were two separate transactions, or a transaction involving two separate occurrences which did not synchronise, so that in the result the £200 reserved by the lease was the rent at which the dwelling was *first* let.

To-day and Yesterday.

LEGAL CALENDAR.

August 28.—On the 28th August, 1744, the following presentment was made against the Methodists at Brecon: "We, the Grand Jury of the County of Brecon . . . having received in charge amongst other learned and laudable observations made by our Honourable Judge of this Circuit that we ought to present every obstruction to our holy religion, as being the most valuable part of our Constitution, and it being too well known that there are several, as we are advised, illegal field and other meetings of persons styled Methodists, whose preachers pretend to expound the holy Scriptures by virtue of inspiration by which means they collect together great numbers of disorderly persons very much endangering the Peace of our Sovereign Lord the King . . . we present the houses following, viz. Pontiwal in the Parish of Broynllys . . . and the house of Howell Harris . . . in the Parish of Talgarth both in this county as places entertaining and encouraging such dangerous assemblies and humbly desire our Honourable Judge, if the authority of the court is not sufficient to suppress the said disorders, that he will be pleased to apply, for that end and purpose, to some superior authority . . . "

August 29.—Ned Wicks was the only child of a substantial innkeeper of Coventry, who gave him a good useful education, but after about fourteen months as an exciseman he took to highway robbery. In this career he experienced the usual ups and downs. Once between Windsor and Colebrook he held up the worthless Lord Mohun, who with a great show of courage proposed that they should fight it out, but, when he saw him resolutely preparing the pistols, began to hesitate. Thereupon Wicks exclaimed: "All the world knows me to be a man, and though your lordship was concerned in the cowardly murdering of Mountfort, the player, yet I'm not to be frightened by that"—a scandal of Mohun's younger days. His lordship in a rage fell into such a passionate fit of swearing that Wicks said: "Come, I'll give you a fair chance for your money and that is he that swears best of us two shall keep his own and his that loseth." Each then threw down a purse of fifty guineas and after a quarter of an hour's swearing Mohun's groom, who had been appointed arbitrator, said: "Why, indeed, your honour swears as well as ever I heard a person of quality in my life, but, to give the strange gentleman his due, he has won the wager if it were for £1,000." Wicks was eventually hanged at Warwick on the 29th August, 1713.

August 30.—In August, 1859, Dr. Thomas Smethurst was convicted of the murder of Miss Isabella Bankes, a few months after he had bigamously married her. By a will made a few days before her death she left him all her property. The question whether or not he had poisoned her gave rise to an extraordinary conflict of highly technical medical testimony and the verdict aroused emphatic criticism both in medical and legal circles. On the 30th August the condemned man himself presented a long petition to the Home Secretary setting out various criticisms of the presentation of the case against him and of the summing up of Lord Chief Baron Pollock. Eventually the facts were submitted to Sir Benjamin Brodie, the well-known surgeon, and on his report a free pardon was granted.

August 31.—On the 31st August, 1812, there was held in the Downs, a court martial on The Honourable Henry Blackwood, captain of the *Warspite*, for the murder of the master of a merchant schooner. The accused had been bringing a convoy through the Mediterranean when the vessel was sighted. The usual means were taken to bring her to, but without effect, and, since several hostile privateers were known to be in those waters, Captain Blackwood gave chase. Shots were fired and the master of the schooner was killed. The mate made representations to the Admiralty, but at the trial no one appeared to substantiate the charge, and the court, presided over by Admiral Foley, adjudged the captain's conduct to have been strictly correct.

September 1.—Formerly, when the crew of one warship were transferred to another each sailor was given a "seaman's ticket," a warrant for the pay due to him, signed by the principal officers. When endorsed it was a negotiable instrument like a bill of exchange, and, lest any man should be tempted to sell his for less than its value, the tickets were deposited with the captain of the ship to which the sailors were turned over, being put into their hands on discharge. During the war of the Austrian Succession, the crew of the *Glasgow* were transferred to the *Royal George*, but when they were discharged the tickets of a dozen of the men were found to have disappeared. The captain showed no special interest in the matter until the Admiralty decided to deduct from his pay the amount due. He then set inquiries afoot and the

were traced to the possession of Robert Cox, his clerk, who had deposited them as security for a loan. Cox was convicted of forging the endorsement on a ticket belonging to a seaman named Benjamin Berry and was hanged at Winchester on the 1st September, 1749.

September 2.—On the 2nd September, 1803, Owen Kirwan, an old clothes dealer, was condemned to death for his part in Robert Emmett's abortive rising in Dublin. Mr. Baron George said: "You were calmly tried and ably defended; the defence was heard with patience and you had every advantage possible to be derived from the laws—more tender of the life of the subject and all the rights attached to society than those of any other country upon the face of the earth; and surely, when the excellence of those laws is considered, the protection they afford, and the pure and rational freedom enjoyed under our unequalled Constitution, it is truly astonishing that any man . . . could be found meditating . . . the destruction of so beautiful a system!"

September 3.—Next day, the 3rd September, Kirwan was hanged in Thomas Street where the fighting had taken place.

HOUSING JUSTICE.

When Mr. Ronald Sykes, the stipendiary magistrate of Leeds, took his seat recently, he made some pointed observations on the lack of suitable accommodation in the law courts of most of the cities in the country, adding: "I am not referring to the convenience of assize judges, barristers and court officials, but of the litigants themselves, witnesses and members of the jury." Nevertheless, the real majesty of the English law has always managed to overcome an immense amount of the haphazard in its accommodation. In Westminster Hall the courts were merely wooden pens built out from the walls and not even covered in, while along each side were stalls selling gloves, books or refreshment and

". . . in Hall of Westminster
"Sweet seamstress vends amid the courts her wares."

The grim and grimy discomforts of the old Central Criminal Court are still a matter of living memory, but it is worth remembering that it was not till 1774 that it could be announced that owing to recent improvements at the Old Bailey "all parts of the court are under cover, and a large room has been provided for the use of witnesses to prevent them standing in the yard exposed to the inclemency of the weather or being at public-houses, and they are to be sent for when wanted to give evidence." There are still a few living who can remember Fry, J., sitting by candlelight in a small room beneath Lincoln's Inn Hall and Library. Those who are interested in the varieties of accommodation afforded to justice on assize may find much curious information in MacKinnon, L.J.'s, delightful book "On Circuit," of which my own copy is almost worn out with use. I like particularly his account of the little barnlike structure at Beaumaris dated 1614, where he found the "Judge's Room" a small wooden cupboard where there was just room enough for him to sit on a Windsor chair. To this he retired while a jury were considering their verdict, but suddenly from the press of spectators "a door or part of the structure gave way and I became the cynosure of curious eyes."

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Prohibited Bathing.

Sir,—I was reading this morning in the *Birmingham Post* a report of the prosecutions at Littlehampton against a number of persons for bathing on a closed beach.

In the report it was stated: "Seven who were legally defended were ordered also to pay £2 2s. each towards the cost of prosecution. There was no order as to costs in the other cases."

This seems to me to be a very unfair discrimination against individuals who are only exercising their right within the framework of our judicial system.

If it became a regular practice of magistrates to inflict costs upon a defendant merely because he chose to be legally represented it would be deplorable from the point of view both of the defendant and the profession.

Sutton Coldfield. J. FOLEY EGGINTON.
22nd August.

Sir,—The amusing report of the learned judge's appearance before the Littlehampton Magistrates recalls the story of that famous lawyer, Lord Eldon. Strolling on the beach at Brighton, his lordship met the wife of another member of the judicial bench watching her husband bathing. She asked Lord Eldon why he was not in the sea. He wittily replied: "My doctor forbids me, and so I and your husband represent the two divisions of crime in jurisprudence. I, alas, am "Malum quia prohibitum" whilst your husband is "Malum in se(a)."

London, E.C.2. CHARLES L. NORDON.
24th August.

Our County Court Letter.

Tenancy for duration of War.

IN *Clements* v. *Page* at Malvern County Court, the claim was for possession of Holly Villa, Upton-on-Severn. The plaintiff's case was that he bought the house to live in, when he retired as licensee of the Swan Inn. He had now retired, and wished to occupy the house with his wife and daughter, and her five children, and also another daughter employed as a rat catcher by the Worcestershire War Agricultural Committee. At present the plaintiff was living with his sister-in-law, which was an inconvenient arrangement, e.g., for the children's schooling. The house was let on condition that the defendant would vacate it on a month's notice. The defendant's case was that he had forty acres of land a mile from the house, with thirty-five head of cattle, and two acres of market garden. He reared calves, and therefore had to live near the farm. His only help was a land girl. The understanding was that the plaintiff would not require possession until after the war. The balance of hardship was in the defendant's favour. His Honour Judge Roope Reeve, K.C., was satisfied there would be greater hardship in ejecting the defendant than in allowing the plaintiff to remain where he was, even at some inconvenience. Judgment was given for the defendant, with costs.

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

E.P. 967. **Collection of Kitchen Waste.** The Kitchen Waste (Licensing of Private Collectors) (Extension No. 2) Order, Aug. 12.

E.P. 946. **Consumer Rationing** (Consolidation) Order, 1944. General Directions, Aug. 16, re supply of Rationed Goods by Local Authorities.

E.P. 947. Consumer Rationing General Directions, Aug. 16, re supply of Rationed Goods by certain Bodies.

No. 936. **Disabled Persons** (Employment) Act, 1944 (Commencement) Order in Council, Aug. 10.

No. 965. Disabled Persons (Non-British Subjects) Regulations, Aug. 14.

No. 937. **Education** (Date of Appointment of Minister) Order in Council, Aug. 10.

No. 979. Education, England and Wales. Compulsory School Age (Postponement) Order, Aug. 17.

E.P. 969. **Food** (Points Rationing) Order, Aug. 15, amending the Food (Points Rationing) Order, 1944.

E.P. 968. Food Rationing. Sugar and Preserves (Rationing) (No. 3) Order, Aug. 15.

No. 970. **Metropolitan Police District.** Metropolitan Police Staffs (Increase of Superannuation Allowances) Order, Aug. 3.

No. 978. Metropolitan Police District. Metropolitan Police Staffs Superannuation (Approved Employment) Order, Aug. 16.

No. 926. **Seeds** (Amendment) Regulations, Aug. 1.

No. 971. **War Risks Insurance.** War Risks (Commodity Insurance) (No. 3) Order, Aug. 16.

[Any of the above may be obtained from the Government Sales Department, Solicitors' Law Stationery Society, Limited, 88A, Chancery Lane, London, W.C.2.]

Notes and News.

Honours and Appointments.

The following appointments have been made in the Colonial Legal Service: Mr. H. M. S. BROWN, Magistrate, Protectorate Courts, Nigeria, to be Assistant Judge, Protectorate Courts, Nigeria; Mr. J. L. CUNDALL, Crown Council, Sierra Leone, to be Resident Magistrate, Jamaica; and Mr. R. H. KEATINGE, Deputy Registrar of the High Court, Tanganyika Territory, to be Resident Magistrate, Kenya.

Notes.

Sir Herbert Dunnico, former Deputy Speaker of the House of Commons, has been appointed Chairman of the Magistrates' Court at Stratford.

Mr. J. F. F. Platts Mills, barrister-at-law, working at Edlington Colliery, near Doncaster, has completed his training and started work on the haulage roads in the pit.

Mr. F. H. W. Buxton, Deputy Town Clerk of Colchester, has been appointed Town Clerk of Newport, Isle of Wight. Mr. Buxton was admitted in 1925.

Lincoln's Inn was damaged in a recent flying bomb attack. Windows and woodwork of the gatehouse facing Chancery Lane, which bears the date 1518, and of Old Buildings, a block of chambers and residential flats adjoining, were smashed and leaded windows of the hall and chapel were broken. Some damage was also done to the roofs of both buildings and to the parapet of the hall.

There has been such a demand for the War Damage Commission's pamphlet "Cost of Works" (Form ROD.1) that the supply for free issue has been exhausted. The pamphlet has now been placed on sale, and may be obtained from H.M. Stationery Office, or through the Government Sales Dept., Solicitors' Law Stationery Society, Ltd., 88A, Chancery Lane, W.C.2, at 3d. per copy, or 25 for 5s.